

13. All other applicable revenues not listed herein.

"Gross Receipts" shall not include uncollectable debt, any federal, state or local taxes separately stated on a customer's bill, and Franchise Fees.

"Gross Receipts" shall not include revenues from Affiliates where the Affiliates have a separate enforceable Franchise with the City providing for payment of such Affiliate Gross Receipts or where the Affiliate does not utilize, transmit communications through, or connect to any part of the Facilities. In the event a Communications Franchisee receives revenues for Communications Services or other activities within and without the City of which the specific portion attributed to operations in the City cannot be directly determined ("Unallocated Revenues"), "Gross Receipts" with respect to such revenues shall mean the portion thereof derived by multiplying such revenues by a fraction, the numerator of which is the Gross Receipts from the City and the denominator of which is the total revenues of Communications Franchisee attributable from the area generating such Unallocated Revenues. All revenue from or relating to or connected with Communication Services deriving from any billing address within the City limits shall be presumed to be Gross Receipts of Communications Franchisee, unless demonstrated in writing to the contrary as to each such revenue.

~~DDEE.~~ **"Gross Revenues"** means any revenue actually received by a Grantee Cable Franchisee, or by any other entity that is a Cable Operator on a Grantee's Cable Franchisee's Cable System including the Grantee's Cable Franchisee's Affiliates, from the operation of the Grantee's Cable Franchisee's Cable System to provide Cable Services. By way of illustration and not limitation, this definition would include to the extent permitted by law revenue derived from pay cable fees, installation and reconnection fees, leased channel access fees; Converter rentals; revenue from Cable Internet Service (if it is not required to be included in the Gross Receipts of a separate binding Communications Franchise with the City as prescribed in this Code); revenue from home shopping to the extent conducted through a Cable Service; all Cable Service lease payments from the Cable System; ~~payments or other consideration received by the Grantee from programmers for carriage of programming on the Cable System and;~~ payments or other consideration received by the Cable Franchisee from programmers; except as provided herein, that is accounted for as revenue under generally accepted accounting principles ("GAAP"); advertising revenues; revenues from data transmissions to the extent these transmissions are considered Cable Services under federal law; payments or other consideration received by the Grantee Cable Franchisee for the use of the Cable System to provide Cable Service and accounted for as revenue under GAAP. Gross Revenues shall include revenue received by any entity other than the Grantee where necessary to prevent evasion or avoidance of the obligations under this Code or a

~~Franchise to pay the applicable Cable Franchise Fees.~~ Revenues which are not directly attributable to specific Cable Subscribers, including, but not limited to, leased access fees, advertising revenues, and home shopping commissions, shall be allocated among the franchising jurisdictions served by the ~~Grantee's Cable Franchisee's~~ Cable System on a per Subscriber or other equitable basis measured in a consistent manner from period to period. Gross Revenues shall not include (i) to the extent consistent with GAAP, bad debt; provided, however, that all or part of any such bad debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; (ii) amounts collected from Cable Subscribers for public, educational and governmental access, provided, however, this exclusion does not limit a ~~Grantee's Cable Franchisee's~~ ability to pass through franchise related costs to the extent allowed by applicable law; ~~or~~ (iii) any taxes on Cable Services furnished by ~~Grantee Cable Franchisee~~ which are imposed directly upon any Subscriber or user by the State, City, or other governmental unit and which are collected by ~~Grantee Cable Franchisee~~ on behalf of said governmental unit; (iv) Franchise Fees collected from Subscribers, or (v) payments or other consideration received by the Cable Franchisee from programmers for carriage of programming on the Cable System to the extent that such Cable Franchisee's books and records indicate that all such payments are utilized for advertising of public interest community events.

~~EE~~ FF. **"Institutional Network" or "I-Net"** means a communication network which is constructed or operated by ~~Grantee Cable Franchisee~~ and which is generally available only to Cable Subscribers who are not residential Subscribers. ~~The I-Net shall~~ As may be required in the applicable Cable Franchise, the I-Net may consist of capacity, fibers or both, from both within the primary cable network and/or separately constructed networks that may be dedicated to governmental, educational and other publicly funded users for two-way, broadband communications. The I-Net includes all equipment and maintenance of equipment required to make the capacity available, including, but not limited to, fiber and coaxial cable, cable modems, switching, routing, transmitting and receiving necessary for the use of the network as set out in the individual Cable Franchise.

~~FF~~ GG. **"Institutional Network Services"** means the provision of an I-Net by a Cable System operator to governmental, educational and other ~~other non-profit, publicly funded users, as determined by the City,~~ Institutional Users pursuant to the terms of its Franchise for non-commercial applications including, but not limited to, two-way dedicated voice, video, data and telephony channels connecting and interconnecting user facilities.

HH. **"Institutional Users"** means governmental, educational, and other non-profit publicly funded users delineated in Exhibit A, as may be amended from time to time with the consent of the Cable Franchisee.

~~this a~~ Franchise shall obligate Franchisee to pay a Communications Franchise Fee of five percent (5%) on all gross revenues directly or indirectly attributable to the provision of OVS service within the City. The City may, at its option, negotiate with Franchisee to exchange all or a part of the Communications Franchise Fees for capacity or Facilities used for City or other public purposes. Any such exchange shall be negotiated based on the Franchisee's cost of providing capacity or Facilities to the City, and shall be credited towards the calculation of applicable Communications Franchise Fees.

- 2.7 **Use of Rights-of-Way; Police Powers; Franchisee's Use Subordinate.** The Franchisee shall construct and maintain ~~its Franchisee's~~ Facilities in accordance with all applicable federal, state and local laws, including all permit requirements, and fee payments, and all other City codes and ordinances in effect as of the date of this Franchise or hereinafter adopted to the extent not in contravention of state or federal law. The grant of a Franchise does not in any way impact the continuing authority of the City through the proper exercise of its Home Rule or statutory powers to adopt and enforce ordinances necessary to provide for the health, safety and welfare of the public. The City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of facilities on any particular segment of Rights-of-Way. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon the Franchisee. The use of the Rights-of-Way authorized by any Franchise shall in all matters be subordinate to the City's use and rights therein. Nothing herein shall be construed to allow the City to take ownership of Franchisee's facilities in violation of any right to due process or compensation as may exist in federal or state law.
- 2.8 **Term.** A Franchise shall be effective for a term of ~~five (5)~~ \_\_\_\_\_ years from its effective date, unless the City reasonably determines that a ~~shorter different~~ term is warranted under the circumstances consistent with applicable law.
- 2.9 **Communications Franchise Fees.** Unless otherwise approved by the Governing Body, the Communications Franchisee shall pay to the City as monthly compensation for the use of the Rights-of-Way a Communications Franchise Fee equal to three percent of monthly Gross Receipts, with a minimum monthly Communications Franchise Fee to be not less than the sum of:
- A. \$ \_\_\_\_\_ \$1000 per month for the first mile of linear Facilities, or part thereof, plus \$ \_\_\_\_\_ \$.16 per month per Linear Foot thereafter up to a monthly charge under this subsection of \$ \_\_\_\_\_ \$7500, and
  - B. \$ 15 per month for each Antenna in the Rights-of-Way, or such other amounts as established by the Governing Body annually, but not less than \$1000 per month.

Provided, however, no such minimum charge shall be imposed during the first \_\_\_\_\_ months after the use of the Rights-of-Way have been authorized by the City, unless another term is warranted under the circumstances and consistent with applicable law.

- 2.10 **Bundled Services.** To the extent Communications Franchisee markets "bundled" services, including combinations of services that may be subject to a Communications Franchise and also a Cable Franchise, Communications Franchisee shall fairly reflect to the City an appropriate and reasonable division of services among the various services offered ~~based on the actual value of each separate service. Whether or not.~~ Revenues from the sale of such bundled services shall be apportioned for purposes of the Communications Franchisee in such manner that an amount equal to the Communications Franchisee's usual and customary charge for Communications Service alone shall be included in "Gross Receipts," provided, however, if a Communications Franchisee discounts the cost or otherwise receives reduced revenue from the sale of such bundled service, the amount attributable to "Gross Receipts" shall be reduced on a pro rata basis equal to the percentage difference between the costs for the bundled and unbundled service components. Whether or not Communications Franchisee separates services on a Subscriber's bill, it will provide to the City the amounts upon which it will pay the Communications Franchise Fee and any applicable taxes or fees based on the provision of Communications Service, and the amounts upon which it will pay the Fee. ~~Should Franchisee engage in billing practices that, in the determination of the City, do not fairly reflect an appropriate split of Communications Services and Cable Services the City will notify Franchisee in writing of its determination. The parties will meet and discuss in good faith whether the billing practices result in an unfair payment of fees to the City. If the parties do not agree on an appropriate method of determining which charges are subject to the Communications Franchise Fees and which are subject to the Cable Franchise Fee, the parties may subject the dispute to arbitration, or may resort to other methods of dispute resolution, including litigation. Fees or taxes which are not paid on the appropriate division of bundled services receipts, when ultimately paid, will be subject to all interest and penalties provided by the applicable Franchise. If Franchisee holds a Cable Franchise, any fee that could be lawfully attributed to Gross Receipts or alternatively "Gross Revenues" under this Code shall be deemed to be subject to the higher fee.~~
- 2.11 **Timing of Payment of Communications Franchise Fees.** Unless otherwise agreed to in writing, all Communications Franchise Fees shall be due and payable on a monthly basis within 60 calendar days of the close of each month for which the payment applies (the "due date").
- 2.12 **Interest on Late Payments and Under Payments.** If any Communications Franchise Fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the

co-location of facilities reasonably incurred by Franchisee and shall participate in the project on reasonably the same time schedule established by both the Franchisee and the City. The City Engineer will work with Franchisee in developing the process for these notification requirements.

- (i) When Franchisee installs any new conduit within a designated High Density Corridor, the Franchisee shall at the request of the City Engineer install sufficient additional conduit or other related facilities ("Excess Conduit") to meet the City's planned infrastructure needs for the City and other proposed users of the Rights-of-Way. Such Excess Conduit shall consist of one four-inch (4") duct, with four (4) pathways, or its equivalent in multiple smaller conduit, unless the City Engineer reasonably determines and demonstrates that there is a need for a greater or lesser amount of conduit at a particular location. The cost of the Excess Conduit may not be deducted from any Franchise Fees payable to the City, or otherwise be charged to the City. Upon completing installation and construction of any such Excess Conduit, Franchisee shall deliver to City a Certificate of Ownership for such excess conduit, free and clear of all claims, liens and encumbrances except for any security interest granted by Franchisee to its vendors or financial institutions for the construction of the System. The Excess Conduit shall be designed and installed in accordance with City specifications. The City may reserve a portion of such Excess Conduit for its own purposes, but shall make available any portion not so reserved to any and all subsequent franchisees (or others as determined by the City) for fair and reasonable compensation on a non-discriminatory basis which shall not be considered a Franchise Fees. Franchisee shall be entitled to recoupment of its documented costs of installation (based on the prorata costs of the conduit section utilized) from such specially allocated revenue paid to the City by another service provider for use or acquisition of the Excess Conduit. When sections of Franchisee's conduit is installed simultaneously with another franchisee, the cost of such sections of Excess Conduit shall also be cost-shared among each franchisee. For purposes of this Section, the term "High Density Corridor" means a specific section or portion of the Rights-of-Way reasonably identified by the City Engineer as having a projected need to accommodate the conduit requirements of multiple providers based upon

proposed construction plans or other objective criteria, and shall initially be limited to those locations identified in Exhibit F appended hereto. Unless otherwise required for demonstrated good cause, such High Density Corridors shall be limited to arterial and collector streets. The City Engineer may establish additional procedures for effecting these sections, including but not limited to procedures for providing notice to prospective users of such excess conduit, to determine the number of conduit required for any proposed location and administering the requirement of this section.

- (ii) The requirements herein shall be administered and applied on a competitively neutral and nondiscriminatory basis with the objective to maximize the available space in the Rights-of-Way and to minimize the total number of excavations and cost of total communications infrastructure installation. Franchisee may appeal any City Engineer designation of a High Density Corridor to the City Council.

- 4.6 **Use of Facilities by others; required terms.** If any ~~Provider-Franchisee~~ chooses to make its Facilities physically available for use by any other ~~Provider-Franchisee~~ ~~Franchisee~~ it shall do so only under terms that are fair and reasonable, competitively neutral and nondiscriminatory, and which do not prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service under the circumstances. ~~Provider~~ ~~Franchisee~~ shall further comply with the facilities attachment requirements of federal law codified at § 47 U.S.C. 224.
- 4.7 **Removal and Relocation of Facilities.** Facilities shall be Removed or Relocated on request of the City at ~~Providers'~~ ~~Franchisees'~~ cost as may be more specifically provided in the ROW Ordinance.
- 4.8 **Provider Franchisee Responsible for Costs.** The ~~Provider-Franchisee~~ shall be responsible for all reasonable costs borne by the City that are directly associated with ~~Provider's-Franchisee's~~ installation, maintenance, repair, operation, use, and replacement of its Facilities within the Rights-of-Way, that are not otherwise accounted for as part of the Permit fee established pursuant to the ROW Ordinance. All such costs shall be itemized and the City's books and records related to these costs shall be made available upon request to the ~~Provider~~. ~~Provider~~ ~~Franchisee~~. ~~Franchisee~~ shall be responsible for its own costs incurred removing or relocating its Facilities when required by the City due to City requirements relating to maintenance and use of the Rights-of-Way for City purposes.

- 4.9 **Insurance and Bonds.** During the term of any Franchise, the ~~Provider~~ Franchisee shall obtain and maintain at the ~~Provider's Franchisee's~~ sole expense, all insurance and bonds required by the ROW Ordinance or applicable Franchise. Nothing contained in this Code shall limit the ~~Provider's Franchisee's~~ liability to the City to the limits of insurance certified or carried.

## CHAPTER 5. MISCELLANEOUS

- 5.1 **Administration of Franchise.** The City shall be responsible for the continued administration of this Code and any Franchises granted hereunder. The City may delegate this authority from time to time in any manner consistent with applicable law, provided, however, that the City shall not delegate enforcement authority.
- 5.2 **Appeals.** Unless otherwise provided herein or by and generally applicable Administrative Appeal process, a ~~Provider Franchisee~~ may appeal any decision of the City pursuant to this Code to the governing body of City within ~~fifteen (15)~~ ten (10) days of such decision where, upon written request of the ~~Provider Franchisee~~ specifying this provision and including the details of the alleged claim, an evidentiary hearing shall be held on such appeal.
- 5.3 **Non-Enforcement by the City.** A ~~Provider Franchisee~~ shall not be relieved of its obligation to comply with any of the provisions of this Code or its applicable Franchise by reason of any failure of the City to enforce prompt compliance.
- 5.4 **Penalties.** Any Person violating any provision of this Code shall be subject to a fine of \$500 per day per violation. The payment of such fine notwithstanding, all such violators shall be subject to all other applicable provisions of this Code to the fullest extent allowed by law, including, but not limited to, the payment of a Communications Franchise Fee or Cable Franchise Fee.
- 5.5 **Publication of Notices.** All public notices or ordinances required to be published by law shall be published in the official newspaper of the City. A ~~Grantee Franchisee~~ shall be responsible for all costs of publication that may be required with respect to its Franchise or any amendments thereto.
- 5.6 **Severability.** If any material Section of this Code or of any Franchise granted pursuant to it is held by a governmental authority of competent jurisdiction, to be invalid or unlawful as conflicting with applicable laws now or hereafter in effect, or is held by a court or competent governmental authority to be modified in any way in order to conform to the requirements of any such applicable laws, such provision shall be considered a separate, distinct, and independent part of the Code, Franchise, and, to the extent possible, such holding shall not affect the validity and enforceability of all other provisions therein.

EXHIBIT C  
SPECIAL CONDITIONS

The following special conditions shall be a condition of this Agreement and shall supercede any provision in this Agreement to the contrary:

1.. This Agreement shall only authorize placement of facilities in existing underground conduit as identified on Exhibit A. No excavation, boring, or other physical disturbance of the right-of-way shall be authorized by this agreement. **No lighting of the fiber or transmission of communications for any purpose other than solely for testing of the installed equipment shall be permitted by this Agreement. Provider agrees that use of the facilities installed by it or any other party shall not occur prior to the effective date of an executed franchise with the City authorizing such use.**



# CITY OF OVERLAND PARK, KANSAS COMMUNICATIONS AND CABLE CODE

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- 1.4 **Preservation of Police Power Authority.** Any rights granted pursuant to this Code and pursuant to any Franchise authorized hereunder are subject to the authority of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. ~~Providers~~ Franchisees shall be subject to and comply with all applicable Laws enacted by the City pursuant to its home rule powers, to the extent not in conflict with Kansas or federal law. Nothing in this Code shall be deemed to waive a right, if any, that any party may have to seek judicial or regulatory review as to the provisions herein or as to actions of the parties under applicable federal, state, or local law currently in effect or as may hereinafter be amended.
- 1.5 **Public Inspection ~~Of~~ Records.** Certain information required to be filed with the City pursuant to this Code is subject to inspection and copying by the public pursuant to the provisions of the Kansas Open Records Act, K.S.A. 45-215 et seq. Notwithstanding any ordinance or provision to the contrary, the City may disclose any proposed or existing Facilities locations of ~~Providers~~ Franchisees as deemed in the public interest and as may be established by City Policy establishing requirements for notification and/or joint installation of facilities.
- 1.6 **Indemnification.** As a condition of use of the Rights-of-Way, ~~Providers~~ Franchisees at their sole cost and expense, shall indemnify, protect, defend (with legal counsel representing the City that is acceptable to the City) and hold harmless the City, its elected officials, officers, employees, and agents, from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and expenses of any kind, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, out of the fact that the City approved a Franchise with ~~Provider~~ Franchisee, the rights granted to ~~Provider~~ Franchisee, or the activities performed, or failed to be performed, by ~~Provider~~ Franchisee under the Franchise or use of the Rights-of-Way, or otherwise, except to the extent arising from or caused by the sole or gross negligence or willful misconduct of the City, its elected officials, officers, employees, agents or contractors. This indemnification shall survive the expiration or termination of any Franchise or use of the Rights-of-Way for a period of ~~five (5)~~ two (2) years after the effective date of expiration or termination.
- 1.7 **No Cause of Action Against the City.** The ~~Provider~~ Franchisee shall have no ~~remedy or recourse cause of action~~ whatsoever against the City for ~~any loss, cost, expense, or damage~~ damages of any kind arising from any of the provisions or requirements of a Franchise, or because of the enforcement thereof by said City, or for the failure of said City to have the authority to grant, all, or any part, of the herein granted; provided that said ~~Provider~~ Franchisee expressly acknowledges that it accepted the rights herein granted in reliance upon its independent and personal investigation and understanding of the power of authority of said City to enter into the Franchise authorized herein with ~~Provider~~ Franchisee; provided

further that the ~~Provider-Franchisee~~ acknowledges by its acceptance of said Franchise that it has not been induced to enter into a Franchise upon any understanding, or promise, whether given verbally or in writing by or on behalf of said City, or by any other person concerning any term or condition of a Franchise not expressed therein; provided further that the ~~Provider-Franchisee~~ acknowledges by the acceptance of any Franchise that it has carefully read the provisions, terms, and conditions hereof and is willing to, and does accept, all of the risk attendant to said provisions, terms, and conditions.

- 1.8 **Compliance With Laws.** In performing activities and exercising its rights and obligations under any Franchise, ~~Providers-Franchisees~~ shall comply with all applicable federal, state and local laws, ordinances, regulations and policies, including, but not limited to, all laws, ordinances, regulations and policies relating to construction and use of public property.
- 1.9 **Enforcement; Attorneys' Fees.** The City shall be entitled to enforce this Code and any Franchise through all remedies lawfully available, and ~~Provider Franchisee~~ shall pay City its costs of enforcement, including reasonable attorneys' fees in the event that ~~Provider-Franchisee~~ is determined judicially to have violated the terms of this Code or any Franchise.
- 1.10 **Relationship of the Parties.** Under no circumstances shall any Franchise authorized by this Code be construed to create any relationship of agency, partnership, joint venture, or employment between the parties.
- 1.11 **Defined Terms.** For purposes of this Code, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this Section, unless the context clearly indicates that another meaning is intended. Words used in the present tense include the future tense, words in the single number include the plural number, and words in the plural number include the singular. The words "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

A. **"Access Facilities"** means:

1. Channel capacity designated for Public, Educational or Governmental Access use; and
2. The facilities and equipment for the use of such channel capacity.

B. **"Affiliate"** means each person, directly or indirectly, controlling, controlled by, or under common control with the Franchisee; provided that Affiliate shall in no event mean any limited partner or shareholder holding an interest of less than 15 percent of such Franchisee, or any creditor of such Franchisee solely by virtue of its status as a creditor and which is not otherwise an Affiliate by reason of owning a controlling interest in, being

**Maryland Heights,  
Missouri**





## **CITY OF MARYLAND HEIGHTS**

212 MILLWELL DRIVE    MARYLAND HEIGHTS, MISSOURI 63043    TEL 314-291-6550    FAX 314-291-7457

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**DATE: NOVEMBER 2, 2000**

**SUBJECT:   APPLICATION FOR LICENSE - TELECOMMUNICATIONS  
                 SERVICE PROVIDERS**

Pursuant to the City's Telecommunications Right-of-Way Management Ordinance, all persons engaging in any telecommunications activity or service or using any communications facility located within the City of Maryland Heights must first register with the City.

Any entity that further proposes to construct, place or locate any facility in, upon, beneath, over or across any public right of way or on another public property must also be approved for a Telecommunication Franchise or License in addition to registration. Depending upon the impact on the right of way, additional fees may also be assigned. Orientation meetings can be scheduled to confer with the City's program, public works, planning and/or legal staff concerning this process.

To begin the process, please fill out the attached application form and mail or deliver it to the City Clerk, City of Maryland Heights at the address shown above.

If you have any questions regarding this application, please contact me at 314-291-6550 extension 204.

Sincerely,

Steve Rasmussen  
Assistant to the City Administrator

**CITY OF MARYLAND HEIGHTS  
TELECOMMUNICATIONS LICENSE APPLICATION FORM**

1. Registrant/Licensee/Applicant (if doing business in the City under another name, please so state)\_\_\_\_\_

2. Registrant's Authorized Contact

Name:\_\_\_\_\_

Address:\_\_\_\_\_

Telephone Numbers - Voice:\_\_\_\_\_ Fax:\_\_\_\_\_

E-mail address:\_\_\_\_\_

Website URL:\_\_\_\_\_

3. Name of Applicant's construction contractor (if applicable) and phone

number:\_\_\_\_\_

4. Is the Applicant a subsidiary of a larger parent company? If so, please

describe:\_\_\_\_\_

5. Please attach an organization chart showing controlling interests.

6. Please describe the system or facility to be constructed or operated by answering the following questions:

a) A general description of the services that are to be provided over the facility:

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- b) The location of the proposed facility and facility design, including a description of the miles of plant to be installed, where it is to be the size of facilities and equipment that will be located in, on, under, over, or above the rights-of-way:

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- c) A description of the manner in which the system will be installed, and the time required to construct the system; the expected effect on right-of-way usage, including information on the ability of the rights of way to accommodate the proposed system, including, as appropriate given the system proposed, an estimate of the availability of space in conduits and an estimate of the cost of any necessary rearrangement of existing facilities:

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- d) Will services be converted from existing facilities to new facilities?  
If YES, describe what disposition will be made of existing facilities:

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- e) Identification of the area of the City to be served by the proposed system, including a description of the proposed license area's boundaries, if a cable system. If a fiber optic system, attach map of proposed lines:

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7. Please attach Missouri Public Service Certificates.
8. Please attach proof, attested to by a certified public accountant, that the applicant has the financial resources to complete the proposed project, and to construct, operate and repair the proposed facility over the license term. (It is not the intent of this provision to require that an applicant prove that the services it proposes to offer will succeed in the marketplace.)
9. Please attach a statement that certifies that the applicant is technically qualified to construct, operate and repair the proposed facility. At a minimum, the applicant must show that it has the experience or resources to ensure that work will be performed adequately, and that it can respond to emergencies during and after construction is complete.
10. Please attach proof that demonstrates that the applicant has received or is in the process of seeking authorizations from state and federal authorities necessary to conduct the activities that will require use of the public right of way. In cases where certifications have been granted by the Mo. Public Service Commission, please attach copies showing type and date of certificate;
11. Does the applicant have an open video system "OVS" license issued by the FCC?  
 Yes ☐ No ☐ If yes, please attach a copy of the license.
12. Will the applicant use the telecommunications facilities, including cable television facilities, requested herein to carry traffic or information for:
13. Does the applicant have an open video system "OVS" license issued by the FCC?  
 Yes ☐ No ☐ If yes, please attach a copy of the license.
14. Will the applicant use the telecommunications facilities, including cable television facilities, requested herein to carry traffic or information for:
- |  | Yes                      | No                       |
|--|--------------------------|--------------------------|
| a. An affiliated company                             | <input type="checkbox"/> | <input type="checkbox"/> |
| b. Another certificated telephone company            | <input type="checkbox"/> | <input type="checkbox"/> |
| c. A competitive access provider                     | <input type="checkbox"/> | <input type="checkbox"/> |
| d. A cable television or other entertainment company | <input type="checkbox"/> | <input type="checkbox"/> |
| e. Other (Identify in an attachment hereto)          | <input type="checkbox"/> | <input type="checkbox"/> |

- [illegible]

[illegible]

22. If applicant intends to attach any part of the telecommunications, including cable television infrastructure which is the subject, in whole or in part, of this application to a pole, please describe the pole attachment plans below, including route, schedule, equipment to be used, etc.

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23. Attach an appropriate scale map to show the route that the telecommunications infrastructure will take through the City. Using colors and a clear legend to show the following: (1) the infrastructure that is proposed in the application, (2) overhead plant that will be installed, even if it is not subject to the application, (3) existing infrastructure owned by applicant (or its affiliate) to which the new plant will be attached or integrated, (4) to the extent known at the time of filing, the entire infrastructure that is planned for the City. If the map scale is too small to show the information clearly, the applicant will be required to supply a larger map.

### **Proposed Telecommunications Infrastructure**

24. Describe the conduit that will be installed as part of the construction proposed in the application. Include size, number of conduits, nature of inner duct (if any), material (HDPE, PVC, etc.), manufacturer.

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25. Indicate the number of conduits/inner ducts that will be occupied initially by applicant's cable.

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26. Provide the following information on any conduit that will be installed as part of the construction proposed in this application.

	Yes	No
Will applicant use directional boring to install conduit?	<input type="checkbox"/>	<input type="checkbox"/>
Will applicant direct bury (trench) the conduit?	<input type="checkbox"/>	<input type="checkbox"/>
Will conduit be installed for other parties during this construction?	<input type="checkbox"/>	<input type="checkbox"/>
Is applicant willing to lease conduit to other parties?	<input type="checkbox"/>	<input type="checkbox"/>
Is applicant going to participate in joint trench?	<input type="checkbox"/>	<input type="checkbox"/>
Is applicant willing to participate in joint trench?	<input type="checkbox"/>	<input type="checkbox"/>

27. Describe the pull boxes, splice boxes and other vaults and pedestals to be installed by applicant (include size, model number, and manufacturer):

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28. Describe the type and amount of cable (fiber-optic, twisted-pair copper, coaxial, etc.) that will be installed by applicant as part of, or as a result of the construction proposed in this application.

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### Impact on City Resources and Quality of Life

29. Assuming that a qualified party, such as a CLEC or a national CAP, approached the applicant about sharing facilities on economic terms that were reasonable, would the applicant be willing to share facilities:

	Yes	No
✓ In general?	<input type="checkbox"/>	<input type="checkbox"/>
✓ Share available conduit or inner duct?	<input type="checkbox"/>	<input type="checkbox"/>
✓ Share fiber strands in a fiber cable?	<input type="checkbox"/>	<input type="checkbox"/>
✓ Share splice boxes?	<input type="checkbox"/>	<input type="checkbox"/>
✓ Share trenching costs in a joint construction project?	<input type="checkbox"/>	<input type="checkbox"/>

30. In order to minimize the impact of applicant's proposed construction, has the applicant:

	Yes	No
Checked pending applications and recently granted permits in the City to determine whether the opportunity to construct using joint trench, or the opportunity to share facilities is available?	<input type="checkbox"/>	<input type="checkbox"/>
Checked street resurfacing schedules?	<input type="checkbox"/>	<input type="checkbox"/>
Proposed to use directional boring in areas where it would minimize the impact on traffic, residents and businesses?	<input type="checkbox"/>	<input type="checkbox"/>

If no directional boring is proposed, please explain why below:

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## AFFIRMATIONS

By signing this application, the applicant or its corporation confirms that they have not engaged in conduct (fraud, racketeering, violation of antitrust laws, consumer protection laws, or similar laws) that allows City to conclude the applicant cannot be relied upon to comply with requirements of the license or provisions of these State Telecommunications Rules or the City Municipal Code;

By signing below, the Applicant indicates that it will faithfully to secure a license, to pay required compensation and to abide by the provisions of applicable law relating to the construction, operation or maintenance of its facilities; and has not entered into any agreement that would prevent it from doing so;

Applicant agrees to comply with the City's land use and planning process (including public notification) for the location of any structures or facilities to be placed in or adjacent to the City's public rights-of-way. The applicant further agrees to provide all necessary information requested by the City including required documentation to conduct applicable environmental impact review.

I declare under penalty of perjury that the foregoing information is true and correct.

Applicant: \_\_\_\_\_  
(owner of the facilities to be installed in the public rights-of-way)

\_\_\_\_\_  
Printed Name, Title and Company

**Special Notes:** To the extent that the applicant is in any respect relying on the financial or technical resources of another person, including another affiliate, the proofs required in sections 2.3 through 2.5 above shall be provided for that person. An applicant will be presumed to have the requisite financial, or technical or legal qualifications to the extent such qualifications have been reviewed and approved by a State agency of competent jurisdiction; or if the applicant holds a franchise or license in the City of Maryland Heights for a cable system, telecommunications facility, or open video system, and its conduct under such other franchise or license provides no basis for additional investigation. An applicant that is leasing existing facilities from a licensed communications facility operator, where the applicant will have no responsibility for any activity that involves work in the rights-of-way, may rely upon the licensee's technical qualifications, and will be presumed to have the necessary financial qualifications.

An application for a transfer of a license must contain the same information required by Section 2 above, except that, if the transferor submitted an application under Section 2, to the extent information provided by the transferor under Section 2.2 remains accurate, the transferee may cross-reference the earlier application.

After review of your application, you will be provided additional details and the procedures for seeking City Council approval of your project and your status within the City as a telecommunications company. Documentation will be forwarded regarding the City's license fees, permit fees, construction standards, traffic control requests, and plan check. Staff will remain available to you for consultation.



Resolution No. 14-178  
Introduced: September 22, 1998  
Adopted: June 22, 1999

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: County Council

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**SUBJECT:** Grant of franchise to Metromedia Fiber Network Services, Inc., to use the public right-of-way.

### Background

1. Sections 49-11 and 49-12 of the County Code provide that the County Council may grant a franchise for use of the public right-of-way after:
  - a) the franchise applicant publishes the application once a week for three consecutive weeks in a newspaper of general circulation in the County;
  - b) the County Executive makes "diligent inquiry" into the value of the franchise and the adequacy of the proposed compensation the applicant will pay to the County;
  - c) the Executive holds a hearing on the application if any taxpayer or affected property owner objects to the franchise within 10 days after publication of the application;
  - d) the Executive makes a written recommendation to the Council about the franchise, including a description of the application and any objections to it, findings about the value of the franchise, and any other relevant matters; and
  - e) the Council decides that the franchise is expedient and proper.
2. On July 14, 15, 22, and 29, 1998, Metromedia Fiber Network Services, Inc. (MFN), published notice of its application for a franchise to the public right-of-way to operate a telecommunications system. The Executive received no objections to the franchise.
3. On September 16, 1998, the Council received the Executive's recommendation to grant a franchise to MFN and a proposed franchise agreement.
4. On October 19, 1998, and June 7, 1999, the Council's Management and Fiscal Policy Committee held worksessions on the MFN franchise application and agreed with the company to make certain changes in the proposed franchise agreement.



1.5 "County" means Montgomery County, Maryland.

1.6 "Effective Date" means the date stated above on which this Agreement was executed by the County.

1.7 "FCC" means the Federal Communications Commission.

1.8 "Fiber Optic Network Facilities" or "Facilities" means fiber optic cables, conduits, converters, splice boxes, cabinets, handholds, manholes, vaults, equipment, drains, surface location markers, appurtenances, and related facilities located or to be located by MFN in the Public Rights-of-Way and used or useful for providing Service.

1.9 "Gross Revenues" means all revenues derived, by MFN or any other person, in whole or in part from the use of the Fiber Optic Network Facilities. Gross Revenues does not include local, state, or federal taxes collected by MFN that have been billed to a Subscriber and separately stated on such bill.

1.10 "Law" means any and all judicial decision, statute, constitution, ordinance, resolution, regulation, rule, tariff, administrative order, certificate, order, or other requirement of the Federal Government, State, or County, or other Agency having joint or several jurisdiction over the parties to this Agreement, in effect either on the Effective Date or at any time during the presence of a telecommunications system in the Public Right-of-Way.

1.11 "MFN" means Metromedia Fiber Network Services, Inc., a corporation duly organized under the laws of the State of Delaware, and its lawful successors, assigns, and transferees.